



370730

**Revised K. Lemberger Deed Restriction for LTR Site**

Clark, Douglas B. to: RICHARD BOICE

Cc: Nola Hicks

07/07/2010 02:19 PM

Hello Richard,

Attached is a copy of the revised recorded deed restriction for Kenny Lemberger's portion of the LTR Site. The property description has been changed to match the fence boundary on the east side of the Site. We also met with the surveyor who has recently surveyed Kenny's property from some subdividing that Kenny has been trying to accomplish with the Town of Franklin to be certain that the description matches his survey of the site. It does.

If you have any questions about this, let me know.

Doug

Doug Clark

Foley & Lardner LLP

608-258-4276 (office)

608-438-6381 (mobile)

**From:** Taugher, Deborah A. [mailto:dtaugher@foley.com]

**Sent:** Wednesday, July 07, 2010 2:02 PM

**To:** Clark, Douglas B.

**Subject:**

The attached document was received from Taugher, Deborah A. with the following comment:

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Document Number

DOC # 1083356

**ENVIRONMENTAL  
PROTECTION EASEMENT  
AND  
DECLARATION OF  
RESTRICTIVE COVENANTS**

STATE OF WI - MTWC CO  
PRESTON JONES REG/DEEDS  
RECEIVED FOR RECORD  
06/15/2010 9:25:54 AM

This Environmental Protection Easement and Declaration of Restrictive Covenants (the "Agreement") is made this 20<sup>th</sup> day of May 2009, by and between Kenneth J. Lemberger, an unmarried man (the "Grantor"), and the Lemberger Sites Remediation Group ("LSRG") ("the Grantee"). The Grantor and Grantee intend that the provisions of this Agreement also be for the benefit of the Wisconsin Department of Natural Resources ("WDNR") and the United States. WDNR and the United States are hereinafter referred to as the "Third Party Beneficiaries."

WITNESSETH:

WHEREAS, Grantor is the owner of certain land in Manitowoc County, Wisconsin, more particularly described on Exhibit A attached hereto and made a part hereof (the "Property");

WHEREAS, the LSRG is comprised of the City of Manitowoc, Manitowoc Company, Manitowoc Public Utilities, Newell Company and Red Arrow Products Company, LLC;

WHEREAS, the WDNR is acquiring this interest pursuant to Wisconsin Statutes Sec. 292.31;

WHEREAS, the Property includes the Lemberger Landfill ("LL") and part of the Lemberger Transport Recycling ("LTR") Superfund sites located near the Village of Whitelaw, which have been listed on the National Priority List under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA");

WHEREAS, the Owner and the LSRG previously executed a Global Access Agreement dated May 31, 1995 and an Amended and Restated Global Access and Easement Agreement dated June 23, 2000 (the "Prior Agreements"), which Prior Agreements specified the conditions upon which the LSRG was granted unrestricted, continuous and permanent access to the Property for itself, for the United States Environmental Protection Agency ("U.S. EPA"), for the WDNR, and each of their contractors, consultants and representatives;

WHEREAS, pursuant to the Prior Agreements, the LSRG has been investigating and remediating hazardous substance contamination and restoring the LL and the LTR sites (the

*25 CLK (Enr)*  
Drafted by and after recording return to:

Attorney Douglas B. Clark  
Foley & Lardner LLP  
P. O. Box 1497  
Madison, WI 53701-1497

005-027-013-000.00,  
Part of 005-034-002-001.00 and  
Part of 005-034-001-000.00  
Parcel Identification Number(s)



"Remediation") under the direction of the U.S. EPA and the WDNR, pursuant to Consent Decree No. 92-C-0583 (E.D. Wis. 1992) (the "Consent Decree") and the Administrative Order by Consent No. V-W-93-C-196 (U.S. EPA Region V, 1993) (the "AOC");

WHEREAS, the parties wish to reaffirm the Prior Agreements in their entirety and to clarify and agree to the following: (1) to grant a permanent right of access over the Property to the Grantee for purposes of implementing, facilitating and monitoring the remedial action; and (2) to impose on the Property use restrictions as covenants that will run with the land for the purpose of protecting human health and the environment; and

WHEREAS, Grantor wishes to cooperate with the Grantee in the implementation of all response actions at the Site.

NOW, THEREFORE:

1. Grant: Grantor, on behalf of itself, its successors and assigns, and in consideration of the terms of the Consent Decree and the AOC, does hereby covenant and declare that the Property shall be subject to the restrictions set forth herein. Furthermore, Grantor on behalf of itself, its successors and assigns, and in consideration of the terms of the Consent Decree and the AOC does give, grant and convey to the Grantee and its assigns, (1) the perpetual right to enforce said use restrictions, and (2) an environmental protection easement of the nature and character, and for the purposes explained in this Agreement, with respect to the Property.

2. Purpose: It is the purpose of this Agreement to convey to the Grantee rights to facilitate the remediation of past environmental contamination and to protect human health and the environment by reducing the risk of exposure to contaminants. It is also the purpose of this Agreement that the Third Party Beneficiaries shall have the right to enforce the terms of this Agreement.

3. Third Party Beneficiaries: Grantor and Grantee, on behalf of themselves and their successors, transferees, and assigns, hereby agree that the WDNR and the United States, together with their successors and assigns, are the intended third party beneficiaries of all the benefits and rights conveyed to the Grantee under this Agreement.

4. Restrictions on use: The following covenants, conditions, and restrictions apply to the use of the Property for the benefit of the Grantee and the Third Party Beneficiaries and are binding upon the Grantor including its successors, transferees, assigns or other person acquiring an interest in the Property and their authorized agents, employees, or persons acting under their direction and control.

(a) Groundwater underlying the Property shall not be extracted, consumed, exposed or utilized in any way, except for the limited purpose of treating and monitoring groundwater contamination levels in accordance with plans approved by the U.S. EPA.



(b) There shall be no disturbance of the surface or subsurface of the land in any manner, including but not limited to filling, drilling, excavation, removal of topsoil, rock or minerals, or change of the topography in any manner.

5. Modification of restrictions: Any request for modification or rescission of this Agreement shall be made to the Grantee, the WDNR and the U.S. EPA at the addresses given below. This Agreement may be modified or rescinded only with the written approval of the U.S. EPA Superfund Division Director and the Director of the WDNR. Grantor, on behalf of its successors, transferees, assigns or other person acquiring an interest in the Property, agrees to file any U.S. EPA approved and WDNR approved modification to or rescission of the Agreement with the appropriate Registrar of Deeds and a certified copy shall be returned to the U.S. EPA and the WDNR at the addresses listed below.

6. Environmental Protection Easement: Grantor hereby conveys and grants to the LSRG, to the Grantee, to the Third Party Beneficiaries and to their contractors, consultants and representatives, an irrevocable, permanent and continuing environmental protection easement for access to and use of, at all reasonable times, the Property for purposes of: (i) preparing for and conducting the Remediation, including but not limited to the construction, operation and maintenance of a groundwater treatment system, a portion of which may be located on the Property and (ii) any other purpose deemed reasonably necessary by the LSRG, U.S. EPA, and/or WDNR, pursuant to the Consent Decree, the AOC, and the Prior Agreements. Subparagraph (ii) shall not be interpreted to expand the purposes for which this easement is given, but shall be interpreted to be consistent with subparagraph (i) and the purpose for which this easement is needed.

7. No Ownership. This Agreement shall not be interpreted as conveying to the LSRG, or any other party, any ownership rights to the Property. This Agreement shall not be interpreted as changing any of the provisions of the Prior Agreements. Grantor acknowledges that it has already agreed to refrain from activity on the Property, or on any additional Grantor-owned property in the vicinity of the Property, that could negatively affect the LSRG's remediation efforts or exacerbate the soil or groundwater contamination at or in the vicinity of the LL or LTR sites.

8. Reservation of Legal Rights. Nothing in this Agreement shall limit or otherwise affect U.S. EPA's rights of entry and access or U.S. EPA's authority to take response actions under CERCLA, the NCP, or other federal law, statute, rule or administrative order.

9. No Public Access and Use: No right of access or use by the general public to any portion of the Property is conveyed by this Agreement.

10. Notice requirement: Grantor agrees to include in any instrument conveying any interest in any portion of the Property, including but not limited to deeds, leases, easements, licenses and mortgages, a notice which is in substantially the following form:

**NOTICE: THE INTEREST CONVEYED HEREBY IS  
SUBJECT TO AN ENVIRONMENTAL PROTECTION  
EASEMENT AND DECLARATION OF RESTRICTIVE**



**COVENANTS IN FAVOR OF, AND ENFORCEABLE BY  
THE WISCONSIN DEPARTMENT OF NATURAL  
RESOURCES AND THE UNITED STATES OF AMERICA  
AS THIRD PARTY BENEFICIARIES.**

Within thirty (30) days of the date any such instrument of conveyance is executed, Grantor must provide Grantee with a certified copy of said instrument and, if it has been recorded in the public land records, its recording reference.

11. Administrative jurisdiction: The federal agency having administrative jurisdiction over the interests acquired by the United States by this Agreement is the U.S. EPA. The WDNR has administrative jurisdiction over the interests acquired by this Agreement.

12. Enforcement: Grantee and Third Party Beneficiaries shall be entitled to enforce the terms of this Agreement by resort to specific performance or legal process. All remedies available hereunder shall be in addition to any and all other remedies at law or in equity, including CERCLA. Enforcement of the terms of this Agreement shall be at the discretion of the Grantee, and any forbearance, delay or omission to exercise its rights under this Agreement in the event of a breach of any term of this Agreement shall not be deemed to be a waiver by the Grantee of such term or of any subsequent breach of the same or any other term, or of any of the rights of the Grantee under this Agreement.

13. Covenants: Grantor hereby covenants to and with the Grantee and the Third Party Beneficiaries, that the Grantor is the lawful fee simple owner of the Property.

14. Notices: Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and shall either be served personally or sent by first class mail, postage prepaid, addressed as follows:

To Grantor:

Kenneth Lemberger  
10007 Reif Mills Road  
Whitelaw, WI 54247

To Third Party Beneficiary:

Wisconsin Dept. of Natural Resources  
101 South Webster Street  
Madison, WI 53703

To Third Party Beneficiary:

U.S. Environmental Protection Agency  
Region Five Administrator  
77 West Jackson Boulevard  
Chicago, IL 60604

To LSRG:

Douglas B. Clark  
Foley & Lardner LLP  
150 East Gilman Street  
Madison, WI 53703  
(608) 258-4276

15. General provisions:

(a) Controlling law: The interpretation and performance of this Agreement shall be governed by the laws of the United States or, if there are no applicable federal laws, by the law of the State of Wisconsin.

(b) Liberal construction: Any general rule of construction to the contrary notwithstanding, this Agreement shall be liberally construed in favor of the grant to effect the purpose of this Agreement and the policy and purpose of CERCLA. If any provision of this Agreement is found to be ambiguous, an interpretation consistent with the purpose of this Agreement that would render the provision valid shall be favored over any interpretation that would render it invalid.

(c) Severability: If any provision of this Agreement, or the application of it to any person or circumstance, is found to be invalid, the remainder of the provisions of this instrument, or the application of such provisions to persons or circumstances other than those to which it is found to be invalid, as the case may be, shall not be affected thereby.

(d) Entire Agreement: This Agreement sets forth the entire agreement of the parties with respect to rights and restrictions created hereby, and supersedes all prior discussions, negotiations, understandings, or agreements relating thereto, all of which are merged herein, except that unless expressly modified or amended herein, nothing in this Agreement is intended or shall be deemed to supersede, replace or amend the Prior Agreements, which remain in full effect and are legally binding on both parties.

(e) No Forfeiture: Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.

(f) Termination of Rights and Obligations: A party's rights and obligations under this Agreement terminate upon transfer of the party's interest in the Easement or Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

(g) Counterparts: The parties may execute this Agreement in two or more counterparts, which shall, in the aggregate, be signed by both parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

(h) Binding Effect: All of the terms and conditions in this Agreement, including the benefits and burdens, shall run with the land as to the Property and shall be binding upon, inure to the benefit of, and be enforceable by the Grantee, the Third Party Beneficiaries and their respective successors and assigns. Non-use or limited use of the easement rights granted in this Agreement shall not prevent the benefiting party from later use of the rights to the fullest extent authorized in this Agreement.


(i) Rule Against Perpetuities: In the event it shall have been determined by a court of competent jurisdiction that any of the interests conveyed or assigned or purported to be conveyed or assigned herein are void as against any rule against perpetuities or Chapter 700 of the Wisconsin Statutes, or its successor, the life or lives of such interest or interests shall be



deemed without any further action on the part of any party to be the longest life or lives possible without violation of any such rule or statute, as it is the intention of the parties hereto that the interest conveyed herein shall not be in violation of any such rule or statute.

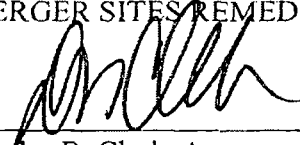
TO HAVE AND TO HOLD unto the Grantee and its assigns forever.

IN WITNESS WHEREOF, the parties hereto, which may be represented by and through their appointed counsel, enter into this Agreement. Each person signing this Agreement represents and warrants that he or she has the full power and authority to enter into this Agreement.

  
Kenneth J. Lemberger, Owner

6/10/10  
Date

LEMBERGER SITES REMEDIATION GROUP

By:   
Douglas B. Clark, Agent

6/10/10  
Date



STATE OF WISCONSIN )  
 ) ss.  
COUNTY OF ~~DANE~~ )  
 Manitowoc

10th of June 2010  
Personally came before me this ~~20th day of May, 2009~~, the above-named Kenneth J. Lemberger, to me known to be the person who executed the foregoing instrument and acknowledge that he executed the same.

Debra J Habech  
~~Deborah A. Taugher~~ Debra J Habech  
Notary Public, ~~Dane County, Wisconsin~~  
My commission expires ~~January 6, 2013~~

Manitowoc WI  
Commission expires  
9-23-12

STATE OF WISCONSIN )  
 ) ss.  
COUNTY OF ~~DANE~~ )  
 Manitowoc

10th of June 2010  
Personally came before me this ~~20th day of May, 2009~~, the above named Douglas B. Clark, to me known to be the agent of Lemberger Sites Remediation Group and the person who executed the foregoing instrument and acknowledge that he/she executed the same on behalf of said entity by its authority.

Debra J Habech  
~~Deborah A. Taugher~~ Debra J Habech  
Notary Public, ~~Dane County, Wisconsin~~  
My commission expires ~~January 6, 2013~~

Manitowoc County WI  
expires 9-23-12

Attachments: Exhibit A-Legal description of the Property





**EXHIBIT A**  
Legal Description of Property

**The Property that is the subject of this Environmental Protection Easement and Declaration of Restrictive Covenants is limited to the property that lies within the fences that surround the Parcels described below:**

Parcel 1:

The Northeast Quarter (NE 1/4) of the Southeast Quarter (SE 1/4) of Section Numbered Twenty-seven (27) Township Numbered Twenty (20) North, Range Numbered Twenty-two (22) East, in the Town of Franklin Manitowoc County, Wisconsin.

Parcel No.: 005-027-013-000.00

Parcel 2:

The East One-half (E 1/2) of the East One-half (E 1/2) of the Northwest Quarter (NW 1/4) of the Northeast Quarter (NE 1/4) of Section Numbered Thirty-four (34), Township Numbered Twenty (20) North, Range Numbered Twenty-two (22) East, in the Town of Franklin, Manitowoc County, Wisconsin.

Parcel No.: Part of 005-034-002-001.00

Parcel 3:

All except the East (E) Two Hundred and Fifty (250) feet of the Northeast Quarter (NE 1/4) of the Northeast Quarter (NE 1/4) of Section Numbered Thirty-four (34); Township Numbered Twenty (2) North, Range Numbered Twenty-two (22) East, in the Town of Franklin, Manitowoc County, Wisconsin.

Parcel No.: Part of 005-034-001-000.00